

TRUSTEES' OPEN MEETING MINUTES

PLACE: Funds Administration Conference Room/Lansing, MI

DATE: August 28, 2013

TIME CALLED TO ORDER: 9:00 a.m.

MEETING RECESSED: 10:34 a.m.

MOVED TO CLOSED SESSION: 10:40 a.m.

RETURNED TO OPEN SESSION: 10:56 a.m.

OPEN MEETING ADJOURNED: 10:57 a.m.

MEMBERS PRESENT:

Trustees: Kevin A. Elsenheimer and Michael T. Reid

Assistant Attorney General: Dennis J. Raterink

Funds Staff: Mark C. Long, Allison Kelly, Richard W. Smith, Janice Remer & Lavonne Blonde

EXCUSED:

Douglas A. Green and Brian Galin

PRESIDING PERSON:

Mark C. Long, Funds Administrator

RESPECTFULLY SUBMITTED:

Lavonne Blonde, Executive Secretary

#	TOPIC	MOTIONS/SECOND/AMENDMENTS MEMORANDUMS/LETTERS	SUMMARY/RESULT
1.	Open Minutes from June 12, 2013 Trustee Meeting.	June 12, 2013 Open Minutes. Motion by Kevin Elsenheimer to approve the open minutes of June 12, 2013 as written. Michael Reid supported.	Unanimous approval. Minutes approved.
2.	Financial Statements	May and June 2013 Financial Statements and Quarter Ending June 2013 Financial Statements.	Mark Long briefly reviewed the May and June 2013 Financial Statements noting the Second Injury Fund and Dust & Logging Fund were solvent and no issues to report. SISF currently has sufficient funding however, solvency issues will arise should we be found liable for the Delphi exposure. Also presented were Quarter Ending June 2013 Financial Statements. Trustees noted.

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3.	Expense Per Claim Analysis Alive & Well Checks	CY 2012 Total Expense per Claims Graph Total Expenses per Claim Trend CY 2008 Through CY 2012 Graph	<p>Mark Long compiled and presented both graphs at the request of Trustee Michael Reid. Mark reviewed the Total Expense per claims graph indicating that all overhead is included in these figures. He also noted that the Total Expense per Claim Trend graph was derived from information obtain thru a 16 State study conducted by WCRI. In comparison to other states, our costs are competitive. Kevin Elsenheimer likes the information presented and suggested this information be put on the Funds Administration website. Michael Reid questioned how we break down the Dust Fund overhead costs as their costs per claim appear to be the highest. Mark advised that Dust Fund has a smaller number of claims to spread overhead over and their claims are more expensive. Janice Remer advised that she will be looking at the costs that are allocated to the Dust Fund as some of those cost may need to be allocated to the Second Injury Fund.</p> <p>Trustees discussed.</p> <p>Mark Long explained our guidelines for Alive and Well Checks for claimants. Normally, a private investigation firm is hired on an annual basis to go see the claimant, ask some questions, get a recent photo and in general make sure the claimant is alive and well. In addition, we also send out "dependency forms" semi-annually to claimants to verify information on dependents, pensions, etc. The costs involved for last year's alive and well checks was extremely high so we began searching for alternatives and decided to try the Berwyn Group, which is the same company use by Office of Retirement Services. They will have secure access, and for a fraction of the cost, run an analysis on our data base to determine if claimants are still alive. This will provide us a significant savings. We will still do actual alive and well check if necessary for reimbursements or for non-responsive claimants on the dependency forms. Dennis Raterink questions what kind of access they would have and if this creates confidentiality issue. Kevin Elsenheimer also asked Mark to speak with Karen Towne, LARA's Information Privacy and Security Officer, regarding the use of the Berwyn Group and the transfer of data.</p> <p>Trustees discussed.</p>

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4.	Assessments	None.	<p>Mark Long advised that we are at 99.1% collected in assessments, right about where we were last year at this time. We still have some outstanding monies that need to be collected and Allison Kelly has been making calls to the delinquent payers'. Michael Reid questioned if it is the same carriers/employers that are late every year. Yes, Mark indicated it is mostly the same carriers/employers every year. They have 90 days from the call date to pay, if a self-insured employer is delinquent, we send the information over to John Schrock in the Self-Insured Programs Division and he begins contacting them for payment.</p> <p>Trustees discussed.</p>
5.	AAG/SAAG Activity and Reports	May, June and July 2013 Litigation and Billing Reports.	<p>Dennis Raterink noted that there was nothing significant to report. For the first time the number of litigated cases is below 800. The numbers reflect the shift of cases from SAAG's to AAG's. The SAAG contract amendment increasing the hourly rate to \$80.00 per hour has been approved and has been sent out to the SAAG's for signature.</p> <p>Trustees discussed.</p>
6.	High Profile Litigation Report	Report.	<p>Mark Long advised that Smitter came down right after the June meeting and kudos to Dennis Raterink and staff for the win. This case not only affects the Funds on coordination of benefits but is fairly significant for all coordination cases in the workers' compensation arena. The Beechler suit is still pending but Smitter will directly impact the decision.</p> <p>Mark also noted two other changes to this report. First, Michigan Court of Claims, Judge Collette granted ACE's motion and denied the Michigan Defendant's motion. Second, United States District Court – Southern District of New York, Judge Engelmayer found that the insurance contract issued by ACE did not provide coverage for Delphi's self-insured entities.</p> <p>Trustees discussed.</p>
7.	BOM & MCAC Outcome	Report.	<p>Mark Long noted only one item has been added to this report since last meeting and it shows as a loss but we will appeal as the Smitter decision will impact this case.</p> <p>Trustees noted.</p>

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8.	Redemption Activity Report June 5, 2013 – August 20, 2013	Report.	<p>Mark Long asked if there were any questions on the redemption activity report, which is a report showing the settlements made within the Funds authority since the last trustee meeting.</p> <p>Trustees noted.</p>
9.	National Steel	None.	<p>Mark Long updated the Trustees on National Steel; we accepted liability in 2003; at that time a union contract was in place with language that did not allow for coordination of pension. We requested the AG's office review the language and see if we could now coordinate based on the Smither decision and they found we could now coordinate. On 14 National Steel cases we began coordination and payments to claimants were reduced or eliminated. Claimants were notified via letter. We have received a few calls regarding this change and anticipate litigation.</p> <p>Trustees noted.</p>
10.	Trustee Policy Review	<p>Copy of Trustee Policy's dated March 19, 2001, March 16, 1971, August 22, 2005, February 21, 1978 and July 21, 1987.</p> <p>Motion by Kevin Elsenheimer to strike from the policy manual the policy dated March 19, 2001. Michael Reid supported.</p> <p>Motion by Kevin Elsenheimer to make the two policies consistent: to modify the August 22, 2005 policy to strike \$200.00 and replace it with \$5.00. Michael Reid Supports.</p>	<p>Mark Long presented 5 Trustee Policy's for review that are of some concern. The first policy, dated March 18, 2001, states that a certified letter will be mailed to delinquent carriers 60 days after the due date; then 14 days after that, if no payment has been received, we will refer to the AG's office. This essentially gives carriers 5 month to pay their assessments. Mark is looking for this time frame to be shortened up or given some authority to contact delinquent carriers prior to the 60 days.</p> <p>Trustees discussed the pros and cons for changing or eliminating this policy. Unanimous approval.</p> <p>The next two policies in question dated March 16, 1971 and August 22, 2005 discuss the amount in which we pursue collection of assessment monies and the amount we refund in overpayment of assessments. Currently the numbers do not match and we are looking to make the policies consistent.</p> <p>Trustees discussed. Unanimous approval.</p> <p>The third policy, dated February 21, 1978 involves payments to claimants. This is a carry-over policy from our previous system where payments to claimants were handled manually and</p>

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10.	Trustee Policy Review	Motion by Kevin Elsenheimer to strike from the policy manual the policy dated February 21, 1978. Michael Reid supports.	<p>payments are made one week behind, one week current and two weeks in advance. The two week in advance is causing unnecessary overpayments and collection of overpayments, especially in the event of collection from a widow/widower/family, is an awkward situation. Mark is looking to pay claimants current. Staff has discussed how to implement this and it may appear as if claimants have missed a payment. We will be sending letters explain the process; we do anticipate this will cause some concern but we will do our best to lay this out for claimants to ease their minds.</p> <p>Trustees discussed. Unanimous approval.</p> <p>The final policy in question, dated July 21, 1987 deals with the requirement of medical and activities investigations on payment files at the expense of the carrier. Concerns were raised by stakeholders regarding the cost involved to them by our policy requiring medical and activities investigations across the board. We are looking for more discretion as to when we are going to require medical and activities investigations. Kevin Elsenheimer questioned how often they are required currently; Mark advised that they are done annually. Michael Reid's concern is a consistent internal procedure. If we have different examiners handling different files we may see inconsistencies. We are looking at a consistent procedure, one with more say as to if and when we conduct medical and activities investigation.</p> <p>Trustees discussed and the item is tabled. Mark will talk with more stakeholders and present proposed policy language to the Trustees.</p>
11.	Delphi Update	None.	<p>Mark Long, without going into legal strategy, gave brief updates on our claims against Delphi. Michigan Court of Claims, Judge Collette granted ACE's motion and denied the Michigan Defendant's motion. Second, United States District Court – Southern District of New York, Judge Engelmayer found that the insurance contract issued by ACE did not provide coverage for Delphi's self-insured entities. We will continue the appeal process and move forward with legislative changes. Mark recently met with Jerry Marcinkowski, Dawn Drobnich (Jerry's successor), and Douglas Green to discuss the concerns the self-insured industry has with the draft language. Mark</p>

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11.	Delphi Update	None.	presented the draft language and suggested changes to the trustees along with a projected cash flow for the SISF showing the DPH settlement. The settlement has not been finalized but should be in the near future. Dennis Raterink noted that the settlement amount could go down based on cases settled. Mark reviewed the draft legislation as well as recommended changes that address the concerns of the self-insured industry and the Funds. Trustees discussed.
12.	Any Other Items Before the Board	None. Motion by Kevin Elsenheimer to approve payment of the trip and travel expenses, \$1,500.00-\$1,700.00, for Brian Galin to attend the NAAG Annual Bankruptcy Conference. Michael Reid supports.	Mark Long advised that there was one item that was omitted from the agenda. The NAAG (National Association of Attorney's General's) Annual Bankruptcy Conference. This is an invaluable conference and Dennis Raterink is asking approval to send Brian Galin. The cost would be \$1,500.00 to \$1,700.00. Trustees discussed. Unanimous approval.
13.	Moved into Closed Session	Motion made by Michael Reid to move into closed session to discuss issues of trial or settlement strategy with Council and attorney-client privileged documents. Kevin Elsenheimer supported.	Unanimous approval. Moved into closed session at 10:40 a.m.
14.	Closed Minutes from June 12, 2013.	None. Motion made by Kevin Elsenheimer to approve the closed minutes from June 12, 2013 as presented in closed session. Michael Reid supported.	Unanimous approval.
15.	Next Meeting	None.	The next meeting will be held on Wednesday, October 23, 2013 at 9:00 a.m. This is a change in date. Trustees noted.
16.	Adjourn Session	Motion by Michael Reid to adjourn the meeting. Kevin Elsenheimer supports.	Unanimous approval. Session adjourned at 10:57 a.m.

Douglas A. Green, Trustee Chair

Date

Mark C. Long, Funds Administrator

Date